

**BEFORE THE INDIANACASE REVIEW PANEL**

In The Matter of N.M.	)	
Petitioner	)	
	)	
and	)	<b>CAUSE NO. 111004-79</b>
	)	
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-26-14 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

The Petitioner, N.M., attended Elwood High School (Elwood) until she enrolled at Frankton High School (Frankton) in the summer of 2011 for the 2011-2012 school year. On August 11, 2011 N.M.'s parents completed the student's portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) and provided the reason for the transfer was for academics, in particular to allow the student to take more Advanced Placement (AP) classes, and requested a waiver under IHSAA Rule 17-8.1 as Petitioner's transfer was without a change of residence by Petitioner's parents under Rule 19-6.2.

On August 11, 2011, Elwood completed its portion of the Transfer Report as the sending school and recommended Petitioner receive limited eligibility status under Rule 19-6.2 and did not sign the Rule 17-8.5 verification. Elwood also provided in its portion of the Transfer Report that the transfer was athletically motivated. On August 16, 2011, Frankton, completed its portion of the Transfer Report as the receiving school and recommended that Petitioner receive limited eligibility under Rule 19-6.2.

On August 16, 2011, the IHSAA Assistant Commissioner Gardner concluded that Petitioner's transfer was, under Rule 19-6.2, a transfer without a change of residence by her parents, and determined Petitioner to have limited eligibility at Frankton until May 24, 2012, having full eligibility May 25, 2012. On or about August 17, 2011, the Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility. On September 16, 2011, the IHSAA Review Committee upheld the Commissioner's determination that Petitioner receive limited eligibility for 365 days or until May 24, 2012.

## APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel<sup>1</sup> on October 3, 2011. On October 7, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On October 18, 2011, the CRP held a meeting where a quorum of members was present.<sup>2</sup> In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

### FINDINGS OF FACT

1. At Elwood, Petitioner participated in varsity basketball, cross country and softball during her freshman and sophomore years.
2. While at Elwood, the Petitioner was very successful academically and received good grades.
3. Petitioner completed her freshman and sophomore years at Elwood.
4. During the summer of 2011, Petitioner enrolled at Frankton for the 2011-2012 school year.
5. Petitioner's parents completed the student's portion of the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) and provided the reason for the transfer was for academics, in particular to allow the student to take more Advanced Placement (AP) classes, and requested a waiver under IHSAA Rule 17-8.1 as Petitioner's transfer was without a change of residence by Petitioner's parent under Rule 19-6.2.
6. On August 11, 2011, Elwood completed its portion of the Transfer Report as the sending school and recommended Petitioner receive limited eligibility status under Rule 19-6.2 and did not sign the Rule 17-8.5 verification. Elwood also provided in its portion of the Transfer Report that the transfer was athletically motivated.

---

<sup>1</sup> The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

<sup>2</sup> Six members were present at the meeting, including Mr. Pat Mapes (chairperson), Mr. Matthew Rager, Mr. Keith Pempek, Mr. Ed Baker, Ms. Dana Cristee and Ms. Cathy Kink. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

7. On August 16, 2011, Frankton, completed its portion of the Transfer Report as the receiving school and recommended that Petitioner receive limited eligibility under Rule 19-6.2.
8. On August 16, 2011, the IHSAA Assistant Commissioner Gardner concluded that Petitioner's transfer was, under Rule 19-6.2, a transfer without a change of residence by her parents, and determined Petitioner to have limited eligibility at Frankton until May 24, 2012, receiving full eligibility on May 25, 2012.
9. On September 16, 2011, the IHSAA Review Committee upheld the Commissioner's determination that Petitioner receive limited eligibility for 365 days or until May 24, 2012.
10. The Petitioner timely sought review by the CRP of the Review Committee's ruling.

### **CONCLUSIONS OF LAW**

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the Respondent has rendered a final determination of limited eligibility for one year, until May 24, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.
3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the

record is not required. The Panel is required to hold a “meeting,” *I.C. 20-26-14-6(c)(2)*, not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. *See I.C. 20-26-14-6(c)(1)*. If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, *I.C. 20-26-14-7(c)*, as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlberg*, 694 N.E.2d at 241.

5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious “only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” *Id.* citing *Dep’t of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association’s rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

*I.C. 20-26-14-7(c)*.

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
7. Under IHSAA Rule 19-6.2, Limited Eligibility When Transfer Without Change of Residence by Parents, provides in pertinent part that a student who transfer without a corresponding change of residence to a new district by the student’s parents will have limited eligibility for one year from the date of enrollment and continues until the first anniversary of the date on which the student last participated in athletics at the former school.
8. Under IHSAA Rule 17-8.1 and Rule 17-8.2, an order may be set aside if clear and convincing evidence is presented to show that enforcement of an IHSAA rule will not

serve to accomplish the primary purpose of the Rule; the spirit of the rule will not be offended or compromised by the waiver; and when a waiver is requested, a hardship condition exists.

9. Substantial evidence does exist to support a finding that the transfer was without a change of residence by the Petitioner's parents: Substantial evidence is in the record to support the assertion that the Petitioner transferred schools without a change of residence by the Petitioner's parents.
10. No clear and convincing evidence that a waiver is merited: Although there is evidence in the record that may be some academic motivations, there was not clear and convincing evidence in the record to support the grant of a waiver under Rule 17-8.1 and Rule 17-8.2. AP courses were offered at Elwood and the Petitioner excelled academically while she attended Elwood. There is evidence in the record to support that Frankton offers approximately 4 more AP classes than Elwood however, there was insufficient evidence in the record to support the granting of a waiver under Rule 17-8.1 and Rule 17-8.2.
11. No substantial evidence to support a finding that the transfer was primarily for athletic reasons: Although Elwood commented on the Transfer Report that Petitioner's transfer was primarily for athletic reasons, there is no evidence to support this assertion. Although Petitioner played three sports at the varsity level while at Elwood, the record is without substantial evidence to support a finding under IHSAA Rule 19-4.
12. Therefore, the IHSAA decision to provide Petitioner with limited eligibility for one year was not arbitrary and capricious and was supported by substantial evidence. Therefore, the IHSAA Review Committee's determination that Petitioner receive limited eligibility or junior varsity eligibility at Frankton until May 24, 2012 is upheld.

### **ORDER**

The IHSAA Review Committee order is hereby **UPHELD by a vote of 6-0**. Petitioner is to have LIMITED ELIGIBILITY or junior varsity eligibility at Frankton until May 24, 2012.

DATE: October 20, 2011

/s/ Patrick W. Mapes  
Pat Mapes, Chair  
Case Review Panel

### **APPEAL RIGHT**

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.